

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

BENJAMIN ESPINOSA.

Plaintiff,

v.

WILLIAM GITTERE, *et al.*,

Defendants.

Case No. 3:21-CV-00205-ART-CLB

ORDER GRANTING PLAINTIFF'S MOTION TO CORRECT DOE NAMED DEFENDANTS

[ECF No. 31]

Currently pending before the Court is Plaintiff Benjamin Espinosa's ("Espinosa") Motion "to Correct Doe named defendants." (ECF No. 31.) In the motion, Espinosa seeks to substitute the proper names for three "Doe" defendants. Specifically, Espinosa seeks to substitute the following names: (1) Defendant John Doe I¹ with "Kitchen Staff Sergeant Homan"; (2) Defendant John Doe II² with "CN III Medical Stark"; and (3) Defendant Doe III³ with "CN I Medical Caldwell." (*Id.* at 1-2.) Defendants did not oppose the motion. For the reasons stated below, the Court grants the motion.

In his motion, Espinosa seeks to amend his complaint to correctly name the above referenced “Doe” defendants. The Court construes this motion as a motion to amend pursuant to Fed. R. Civ. P. 15(c)(3). This rule allows an amended pleading to relate back to the date of the original pleading when the amendment changes the name of a party against whom a claim is asserted if the claim asserted arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading.

1d.

111

¹ This individual is identified as “John Doe Kitchen Staff Sergeant” in the Court’s Screening Order and this reference will be utilized in this order. (See ECF No. 22 at 13.)

² This individual is identified as "John Doe Nurse 2" in the Court's Screening Order and this reference will be utilized in this order. (*Id.*)

³ This individual is identified as “John Doe Nurse 3” in the Court’s Screening Order and this reference will be utilized in this order. (*Id.*)

1 The Court finds that the substitution of "Kitchen Staff Sergeant Homan" for "John
2 Doe Kitchen Staff Sergeant", "CN III Medical Stark" for "John Doe Nurse 2", and "CN I
3 Medical Caldwell" for "John Doe Nurse 3" relate back to the conduct alleged in the original
4 complaint, (ECF No. 1-1), and the first amended complaint. (ECF No. 23.) Therefore, the
5 Court **GRANTS** Espinosa's Motion. (ECF No. 31)

6 Accordingly, **IT IS ORDERED** that the first amended complaint shall be deemed
7 amended to reflect the following: (1) "Kitchen Staff Sergeant Homan" shall be amended
8 and substituted for "John Doe Kitchen Staff Sergeant"; (2) "CN III Medical Stark" shall be
9 amended and substituted for "John Doe Nurse 2"; and (3) "CN I Medical Caldwell" shall
10 be amended and substituted for "John Doe Nurse 3". In addition, the Clerk of Court shall
11 **CHANGE** the docket to reflect these amendments.

12 < b>IT IS FURTHER ORDERED that the Clerk shall **SEND** a copy of this order, along
13 with a copy of Espinosa's First Amended Complaint, (ECF No. 23), and a copy of the
14 Court's Screening Order entered March 4, 2022, (ECF No. 22), to the Office of the
15 Attorney General of the State of Nevada, attention Andrew Christian Nelson. The Office
16 of the Attorney General shall advise the Court on or before, **Thursday, November 17,**
17 **2022** whether they can accept service of process for **Defendants Kitchen Staff**
18 **Sergeant Homan, CN III Medical Stark, and/or CN I Medical Caldwell**. If the Attorney
19 General accepts service of process for any of these defendants, such defendant shall file
20 and serve an answer or other response to the first amended complaint within sixty (60)
days of the date of entry of this order.

21 < b>IT IS FURTHER ORDERED that if the Attorney General will not accept service for
22 any of these defendants on the ground that they are a former employee of the Nevada
23 Department of Corrections, then the Attorney General shall submit that former employee's
24 last known address to the Court under seal.

25 **DATED:** November 3, 2022.



UNITED STATES MAGISTRATE JUDGE